
Guide to Retirement and Reemployment Provisions

**South Dakota
Retirement System**



November 2005

RETIREMENT AND REEMPLOYMENT PROVISIONS

This document is designed to provide members and participating employers with the provisions of law that define when a member can retire, and what requirements pertain to being reemployed by the same employer or with another participating employer of the South Dakota Retirement System. For your convenience, this document is designed as though a member is asking retirement questions. A checklist related to the severance of employment prior to retirement and reemployment of a retired member is also included.

Question #1: When can I retire?

You may retire 10 years prior to your normal retirement age (age 65 for Class A and Class B Judicial members and age 55 for Class B Public Safety members), if you have at least three years of contributory service. Your age and credited years of service will determine the type of benefit that will be computed - a normal or special early retirement benefit, or an early reduced benefit. Your employment must be completely terminated, including the full and complete payout of all termination pay and benefits, with final SDRS contributions paid to the system, prior to your receiving a retirement benefit from SDRS.

Question #2: When can my SDRS retirement benefit start?

South Dakota Codified Law (SDCL) 3-12-90 is the law that pertains to when retirement benefits can start on early or normal retirement.

§3-12-90. Commencement of benefits on early or normal retirement-Termination of benefits- Maximum retroactive benefits on late application. Benefits paid upon early or normal retirement shall commence on the earlier of the member's required beginning date or on the first day of the month following the later of, the date on which the member's contributory service terminated, thirty days after the written application for retirement benefits is received in the office of administrator, or the date specified in the member's application for retirement. In any event the benefit shall be paid from the first day of the month. The last payment shall be made from the first day of the month in which the member's death occurs.

It is very important to note that if you have initiated a "purchase of service contract" with SDRS, the contract must be completed and fully paid to receive full service credit for the purchase. Failure to fulfill the contract requirements will affect your retirement benefit.

Question #3: What is the definition of "termination of employment" for retirement purposes?

SDCL 3-12-90 requires that a member's contributory service must be terminated before a retirement benefit can be started. Termination of employment is covered by SDCL 3-12-47(70), which provides the following definition in law:

§ 3-12-47(70) "Terminated," complete severance of employment from public service of any member by resignation or discharge, not including leave of absence, layoff, vacation leave, sick leave, or jury duty, and involving all termination proceedings routinely followed by the member's participating unit, including payment to the member for unused vacation leave, payment to the member for unused sick leave, payment to the member for severance of an employment contract, severance of health insurance coverage, severance of life insurance coverage, or severance of any other such perquisite of employment granted by the member's participating unit to an active employee;

By SDRS definition, you must be terminated in the month prior to the date that your retirement benefits begin. In addition, IRS (Internal Revenue Service) regulations that govern SDRS prohibit distributions from SDRS (a "qualified" retirement system) while you are still at work.

In other words, a complete and distinct termination of employment must be accomplished before your SDRS retirement benefit can begin. This means you have absolutely and unconditionally resigned; forfeited all continued rights to employment; and are considered a terminated employee for other employee benefits, including termination of any group health or life insurance plans or accounts, payouts of any accumulated annual leave and/or sick leave payments, and, if applicable, activation of any forfeiture provisions required under an employment contract for premature termination. Further, SDRS must receive the verification of termination from your employer and you must receive the final payroll and termination pay from your employer.

This is a very important provision because if a future audit or other discovery determines that a complete termination of employment did not occur and/or your employer's reemployment process was not followed, your retirement benefit could cease and you could be required to repay the amount of SDRS benefits that were paid under false representation of the facts.

Question #4: Can I become reemployed after I retire?

Retirees that wish to become reemployed with either the same employer or another employer that participates in the South Dakota Retirement System must recognize the regulatory requirements of SDCL 3-12-81.1. This law outlines the reemployment of a retired member, the termination of the member's relationship with the initial employer, and the hiring procedures, as follows:

§3-12-81.1 Reemployment of retired member--*If a retired member becomes reemployed as a permanent full-time employee by a participating unit, the member first shall have terminated the member's employment relationship with the initial participating unit, as outlined in subdivision 3-12-47 (70) and as required pursuant to Revenue Ruling 57-115 by the Internal Revenue Service. The initial participating unit's system representative shall certify to the system that the termination of the employment relationship took place. In addition, the member shall have been subject to all proceedings and requirements associated with the hiring and employment of any new employee by the second participating unit, and that unit's system representative shall so certify to the system. If a single participating unit is both the member's initial participating unit and the member's second participating unit, it shall follow all termination procedures and all hiring procedures relative to the member as outlined by this section, and its system representative shall so certify.*

An important point in the determination of reemployment is, "the member shall have been subject to all proceedings and requirements associated with the hiring and employment of any new employee by the second participating unit, and that unit's system representative shall so certify to the system."

In any event, your qualifying termination of employment must be physical as well as contractual. In all cases, your employment termination must be completed and certified by your employer before any request for a SDRS retirement benefit can be granted. **No formal or informal reemployment agreement of any kind may exist, and if a commission or board governs the rehiring entity, the decision to rehire may not be made in the same meeting during which the resignation is accepted.**

Question #5: What happens if I retire with a normal or special early retirement benefit and become reemployed with a participating SDRS employer?

If you have a qualifying employment termination, retire under SDRS normal or special early retirement (no reduction in benefits), and then become reemployed as a participating member with a covered SDRS employer on or after July 1, 2004, the following provisions will apply:

SDRS Normal or Special Early Retirement – Reemployment Provisions

- Your SDRS retirement benefit payments will continue during your reemployment period;
- Your cost-of-living (COLA) yearly adjustment will be eliminated on your retirement benefit during your period of reemployment (Class B public Safety retirees reemployed as a Class A member continue to receive their annual cost of living adjustment);
- If your reemployment lasts three years or longer, you will be eligible for an additional retirement benefit, based on the contributory reemployment service and/or any purchased service during your reemployment period;
- You will no longer be eligible for disability and family benefit coverage; and
- You will be required to make contributions to SDRS.

Question #6: What if I retire early with a reduced SDRS benefit and return to work with a participating SDRS employer?

If you have a qualifying employment termination, retire under SDRS early retirement (your benefit is reduced), and then become reemployed as a participating member with a covered SDRS employer on or after July 1, 2004, the following provisions will apply:

SDRS Early Retirement – Reemployment Provisions

- Your SDRS retirement benefit payments will be suspended during the period of reemployment;
- Your cost-of-living (COLA) yearly adjustment will be eliminated during the reemployment period;
- If your reemployment lasts three years or longer, you will be eligible for an additional retirement benefit, based only on the contributory reemployment service and/or any purchased service during the reemployment period;
- You will no longer be eligible for disability and family benefit coverage; and
- You will be required to make contributions to SDRS.

Under either normal, special early, or early SDRS retirement, if you perform less than three years of contributory service after your reentry into covered employment, you shall receive a refund of your contributions and seventy-five percent of your employer's contributions, plus interest on both at the effective rate during the period of reemployment.

Question #7: Do I need to contact SDRS if I wish to retire?

Yes. In addition to notification to your employer, SDRS does require that an application for retirement benefits be received in the SDRS office at least 31 days prior to the expected month of retirement. In addition to your retirement application, you need to submit a copy of your birth certificate and, if applicable, a copy of your spouse's birth certificate and a copy of your marriage certificate. It is important that you do not delay in contacting the SDRS office should you wish to start a retirement benefit.

If you have any questions or need any assistance, please do not hesitate to contact SDRS.

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We're on the web!
www.sdrs.sd.gov

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Severance of Employment Prior to Retirement - Checklist

South Dakota Codified Law ("SDCL") § 3-12-47(70): "Terminated," complete severance of employment from public service of any member by resignation or discharge, not including leave of absence, layoff, vacation leave, sick leave, or jury duty, and involving all termination proceedings routinely followed by the member's participating unit, including payment to the member for unused vacation leave, payment to the member for unused sick leave, payment to the member for severance of an employment contract, severance of health insurance coverage, severance of life insurance coverage, or severance of any other such perquisite of employment granted by the member's participating unit to an active employee.

- ☐ The employee has absolutely and unconditionally resigned; forfeited all continued rights to employment; and is considered a terminated employee for other employee benefits, including any group health or life insurance plan and any similar Section 125 plans or accounts; **and**
- ☐ Any accumulated annual leave, sick leave, or early retirement has been paid to the employee, if applicable.

SDRS must receive the verification of termination from the employer and the member must receive the member's final payroll from the employer before a SDRS retirement benefit can be paid - SDCL § 3-12-90. SDRS anticipates the minimum time necessary to accomplish this is one normal pay period.

- ☐ No agreement to reemploy has been made informally or formally prior to termination of employment. Employers cannot make any promises, directly or indirectly, that the terminating employee will be reemployed and, in fact, should follow whatever normal practices are used to fill a vacant position; **and**
- ☐ If a commission or board governs the employer entity, the employee's resignation has been accepted in the form of a motion that notes all employment rights are forfeited; **and**
- ☐ If the terminating employee is obligated under an employment contract that is prematurely terminated due to the resignation, any forfeiture provisions for premature termination must have been activated. If the provisions have been waived, the rationale for waiving them should be included in the motion to accept the resignation.

A qualifying termination of employment must be physical as well as contractual. SDRS will not recognize an employee's resignation as a termination of employment if the employee's resignation and an offer for reemployment are made at the same commission or board meeting.

Reemployment of a Retired Member - Checklist

South Dakota Codified Law § 3-12-81.1. Reemployment of retired member-Termination of relationship with initial participating unit-Hiring procedures. If a retired member becomes reemployed as a permanent full-time employee by a participating unit, the member first shall have terminated the member's employment relationship with the initial participating unit, as outlined in subdivision 3-12-47(70) and as required pursuant to Revenue Ruling 57-115 by the Internal Revenue Service. The initial participating unit's system representative shall certify to the system that the termination of the employment relationship took place. In addition, the member shall have been subject to all proceedings and requirements associated with the hiring and employment of any new employee by the second participating unit, and that unit's system representative shall so certify to the system. If a single participating unit is both the member's initial participating unit and the member's second participating unit, it shall follow all termination procedures and all hiring procedures relative to the member as outlined by this section, and its system representative shall so certify.

- ☐ If the retired member is reemployed, the member shall have been subject to all proceedings and requirements associated with hiring a new employee into the position without any expressed or implied agreement to be reemployed; and
- ☐ If the retired member is reemployed, and if a commission or board governs the entity, the reemployment decision, including the new salary and terms of employment, is stated in a single motion. In order for the separation of service to be valid, the employer must have discretion as to the salary and conditions of reemployment. In addition, the reemployment decision may not be made in the same meeting that the resignation is accepted; and
- ☐ If an employee contract is necessary, the reemployment includes a new employment contract with the terms and conditions of the reemployment fully specified.

The member shall have been subject to all proceedings and requirements associated with the hiring and employment of any new employee by the participating unit, and the unit's system representative shall so certify to the system.

Warning: The provisions of this checklist are very important because if a future audit or other discovery determines that a termination of employment did not occur and/or the employer's employment process was not followed, the member's retirement benefit could cease and the member could be required to repay the amount of SDRS benefits that were paid under false representation of the facts.

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